

DRAFT APPENDIX C*: Metric 4a Inspection Coverages [DRAFT 3.24.14]

Metric Number	Metric Text	NPDES CMS Target Description	DEC Commitment ¹	CY 2011 Universe	CY 2011 CMS Goal - Inspections Conducted	CY 2012 Universe	CY 2012 CMS Goal - Inspections Conducted	Finding
4a1	Pretreatment compliance inspections and audits	Every five years, two PCIs and one audit at each approved local pretreatment program	Audit at least once in five years and PCI in intervening yrs ²	1	0 - 0	2 ³	1 - 0	Area for State Improve't.
4a2	Inspections of SIUs discharging to non-authorized POTWs	One pretreatment inspection and sampling at each SIU annually	Inspect and sample SIUs at least once per year ⁴	At least 3 ⁵	0 - 0	At least 3 ⁵	0 - 0	Area for State Improve't
4a3	State oversight of SIU inspections by approved POTWs	PCIs and audits should ensure authorized POTWs are inspecting 100% of SIUs	Oversight method will be annual inspection ⁶	1	0 - 0	2	1 - 0	Area for State Improve't
4a4	CSO inspections	One inspection of each CSO every three years	EPA CMS goal ¹	1 ⁷	0 - 0	1 ⁷	0 - 0	Area for State Improve't
4a5	SSO inspections	SSO inspections scheduled as needed based on information received directly by EPA	EPA CMS goal ¹	Indeterminate ⁸	Indeterminate - 0	Indeterminate	Indeterminate - 0	Area for State Improve't
4a6	Phase I MS4 audits or inspections	One audit of each Phase I MS4 by Oct. 2012 and one every five years thereafter; inspections as needed ⁹	EPA CMS goal ¹	2 ¹⁰	0 - 0	2 ¹⁰	0 - 1	Area for State Improve't
4a7	Phase II MS4 audits or inspections	One inspection or audit of each Phase II MS4 by Oct. 2014 and one every five years thereafter ⁹	EPA CMS goal ¹	2 ¹¹	0 - 0	2 ¹¹	0 - 0	To Be Determined
4a8	Industrial stormwater inspections	Inspections of 10% of the industrial stormwater universe each year	DEC CMS commitment same as EPA CMS goal	206 ¹²	56 ¹² - 55 ¹³	240 ¹⁴	58 ¹⁴ - 26 ¹⁵	Exceeds Expectations ¹⁶
4a9	Phase I and II construction stormwater inspections	Inspections of 10% of Phase I and 5% of Phase II construction stormwater universes each year	DEC CMS commitment same as EPA CMS goal	>795 (TBD) ¹⁷	58 ¹⁷ - 46 ¹⁸	>679 (TBD) ¹⁷	49 ¹⁷ - 20 ¹⁹	Area for State Improve't ²⁰
4a10 and 4a11	Inspections of NPDES permitted large and medium CAFOs and non-permitted CAFOs	One inspection of each large and medium permitted CAFO every five years and of each non-permitted CAFO by Oct. 2012 and as needed thereafter	Not Applicable (NA) ²¹	NA	NA	NA	NA	NA

1. DEC made some specific inspection and related compliance monitoring commitments in the State's October 2008 Amended Final [APDES] Program Application (approved October 31, 2008) which includes an APDES Program Description (Final October 29, 2008). If DEC did not have a specific CMS plan or commitment for a given CMS inspection area or sector, EPA evaluated DEC against the national inspection coverage goals set forth in the EPA's 2007 NPDES CMS. The inspection numbers in the table's 6th and 8th columns marked in part "CY 2011 CMS Goal" and "CY 2012 CMS Goal" respectively for Metrics 4a1-4a4 and 4a6-4a9 reflect DEC's projections in their proposed 2011 and 2012 CMS and inspection plans. With regard to Metric 4a5 (SSO inspections), DEC did not have a strategy in 2011-2012 to identify and evaluate information on which to propose and conduct SSO inspections; accordingly, the annual SSO inspection projections are identified as indeterminate.
2. *See* DEC Program Description, Section 9.1.4. The State's October 2008 Amended Final [APDES] Program Application (approved October 31, 2008) includes an APDES Program Description (Final October 29, 2008), herein referred to as "DEC Program Description." Without a Program Description modification and subsequent to the Phase II transfer (i.e. October 31, 2009) which included the pretreatment sector, DEC's annual CMS submissions adopt the EPA CMS goal of at least two PCIs every five years.
3. DEC has had pretreatment sector authority and jurisdiction since the APDES Phase II transfer, October 31, 2009. Initially, the Fairbanks/GHU POTW (AK0023451) was the only approved pretreatment program. The North Pole POTW (AK0021393) pretreatment program was approved May 5, 2012.

DEC's 2012 CMS indicated that a PCI would be conducted in 2012 at the Fairbanks/GHU POTW. DEC subsequently confirmed that the September 2012 inspection was not a PCI. DEC also reported that a pretreatment audit was completed at this facility by Tetra Tech on May 11, 2010 but there are no ICIS entries to corroborate that such an audit was completed and documented. ICIS does not show the completion of any PCI or audit of this facility since completion of the Phase II transfer. No audit report has been provided to EPA to date.

DEC also confirmed that the May 2012 inspection of the North Pole POTW was not a PCI.

DEC's CY 2013 CMS did not include any proposed PCIs or audits of either of the two POTW pretreatment programs. DEC's decision to not conduct PCIs was due in part to the POTW compliance evaluation inspections (CEI) that were

completed in 2012 at each facility. The DEC CY 2013 CMS did not explain why a CEI is relevant to a decision to not conduct the PCI as provided in the EPA CMS or DEC Program Description.

Even if an audit was completed in 2010, DEC will not meet either the EPA CMS goal (two PCIs every five years) or its Program Description commitment (annual PCIs) with regard to PCIs for the Fairbanks/GHU POTW within the first five year term of DEC's pretreatment program. DEC is not meeting its Program Description commitment with regard to PCIs for the North Pole POTW.

If DEC conducted a PCI of the Fairbanks/GHU POTW in 2014, it will have completed 20% of its PCI commitments under the Program Description (annual inspections) and 50% of the EPA CMS PCI inspection goals within the first five years of its pretreatment program for this facility. At this time, DEC has not met its Program Description commitment for annual PCIs for the North Pole POTW, however, DEC has time to meet the EPA CMS for PCIs and an audit within its first five years of overseeing the North Pole POTW pretreatment program.

4. See DEC Program Description, Section 9.1.4, which states in part that DEC will inspect and sample SIUs in non-delegated POTWs at least once per year.
5. In accordance with the DEC Program Description, Section 8.3.1, DEC committed that, prior to assuming authority to implement the pretreatment program (i.e. prior to October 31, 2009), it would develop a plan to complete a state-wide industrial survey of all industrial users (IUs) in non-delegated POTWs that might be subject to pretreatment requirements in an effort to identify all facilities meeting the definition of categorical or significant non-categorical industrial users (SIUs). DEC committed to periodically reviewing and updating the DEC SIU inventory. DEC confirmed that this state-wide survey was not completed. DEC reported that a targeted survey of three cities was conducted in late September 2009 using a contractor as part of a capacity building effort to train DEC staff on how to identify SIUs. Ten IUs were identified as potential SIUs but no final DEC SIU determinations were made on these facilities.

The DEC Program Description, Section 8.13.3, identifies three categorical IUs in North Pole: Petro Star refinery, Golden Valley Energy Association and Flint Hills refinery. As explained in Note 3 above, the North Pole POTW pretreatment program was approved on May 5, 2012.

DEC's CMS inspection plan submittals for CYs 2010-2013 do not identify proposals for conducting SIU sampling inspections in non-authorized POTWs. DEC reports that an SIU inspection (non-sampling) of Flint Hills refinery was done in 2010. DEC reports no SIU sampling inspections were done in 2011 or 2012. ICIS only shows evidence of the 2010 Flint Hills refinery inspection.

In accordance with the DEC Program Description and the EPA CMS, DEC should have conducted annual pretreatment/sampling inspections at the three SIUs in North Pole from October 31, 2009 through North Pole's pretreatment program approval on May 5, 2012. DEC partially completed one SIU pretreatment/sampling inspection (a non-sampling event) within the first three years of its authority and jurisdiction over the pretreatment sector. At a minimum, DEC should have completed at least six complete SIU pretreatment/sampling inspections over that time period.

6. *See* DEC Program Description, Section 9.1.4. The finding for Metric 4a3 on the need for state improvement is based on the evaluation in Note 3 above for the same finding for Metric 4a1.
7. DEC's only CSO facility is the Juneau-Douglas POTW (AK0023213). DEC reports that its 2010 compliance evaluation inspection (CEI) inspection report identified: (1) the lack of any public notification for CSO occurrences and impacts; (2) that there were no onsite copies of the CSO annual reports; and (3) identification of the POTW's failure to provide a copy of a long-term CSO control plan in accordance with EPA's CSO Control Policy. The Juneau-Douglas POTW is a major facility; accordingly, it is subject to the DEC Program Description commitment of an annual inspection and the EPA CMS goal of one CEI every two years. DEC did not inspect this facility in 2011 or 2012. The facility was on DEC's CY 2013 CMS inspection schedule but recent DEC 2014 submissions indicate the facility was not inspected in 2013 as planned. DEC is not inspecting this CSO facility at least once every three years under Metric 4a4. This Metric 4a4 performance issue could be easily rectified if DEC adhered to its Program Description annual inspection commitment or the EPA CMS goal of once-every-two-years and the inspector included the CSO related facility and permit provisions in the inspections.
8. As of August 2013, DEC did not have a written strategy that identifies and evaluates potential SSO information for the purposes of devising follow-up SSO inspections. In August 2013, DEC indicated that a strategy would be considered as part of their CY 2014 CMS effort. The finding on the need for state improvement is based on the lack of a historic or existing strategy and implementation that has demonstrated DEC's ability to identify and evaluate SSO-related information

which has then been used to devise and implement an applicable follow-up SSO inspection strategy. DEC's December 24, 2013 Letter (i.e. CY 2014 CMS) indicates that the 24-hour compliance hotline tracking spreadsheet is now being evaluated for reports of sewer overflows. EPA has requested additional information on which facilities are identified for SSO inspections in 2014.

9. See Clean Water Act Metrics Plain Language Guide (State Review Framework Round 3), Appendix D. For Phase I and Phase II MS4s, after the initial audit or inspection conducted within five or seven years of the 2007 NPDES CMS issuance, respectively, the goal is for the state to conduct another audit or inspection with the follow timeframes:

<i>If initial audit/inspection leads to determination of . . .</i>	<i>Then another audit/inspection should be conducted within . . .</i>
Full compliance or only minor violations	Five years
Violation(s) requiring enforcement order	One year

10. Port of Anchorage (AKS052426) and City of Anchorage/ADOT (AKS052558). In regard to the City/ADOT MS4, ICIS shows an inspection was conducted in 2012. Additionally, a joint EPA/DEC audit was planned for the City/ADOT MS4 in 2013 as part of national initiative but the audit is being rescheduled. The Port of Anchorage MS4 has not been audited or inspected since EPA's February 2008 audit and it was not on DEC's CY 2013 CMS for an audit or an inspection in 2013. Accordingly, DEC has not achieved CMS goals regarding the Port of Anchorage MS4.
11. Fairbanks (AKS053406) and Fairbanks/NB (AKS053414). DEC reports that the January 8, 2010 inspections identified in ICIS for these two facilities were not MS4-based programmatic inspections but instead were follow-up responses to complaints received by DEC with a focus on compliance assistance. DEC could complete the audit/inspection commitment for both facilities if it allocates inspection resources accordingly in 2014.

DEC's February 15, 2013 Letter (i.e. CY 2013 inspection schedule) and DEC's December 24, 2013 Letter (i.e. CY 2014 CMS) both state that an audit of the City of Fairbanks MS4 was conducted in January, 2010. At this time, EPA has not yet corroborated whether this audit occurred as stated. DEC's April 23, 2010 Letter (i.e. CY 2010 inspection schedule) does

not identify either a planned inspection or audit of the Fairbanks MS4 in CY 2010. There are no ICIS entries indicating an audit was done in January 2010. EPA will pursue additional corroboration from DEC on this audit.

Regardless of whether the January 2010 audit occurred, the determination of whether this Metric 4a7 has been met is indeterminate at this time because DEC still has until October 2014 to complete any requisite audits and inspections for these two Phase II facilities.

12. DEC's December 30, 2010 Letter with CY 2011 EPA-based CMS inspection list ("DEC 2011 CMS").
13. DEC SFY 2011 End-Year Inspections Report (Final 7/28/2011), "Inspections Report based on Inspections Performed from 7/1/2010 to 6/30/2011" (4 pages, dated 7/28/2011) and DEC SFY 2012 End-Year Report (July 2012), "Inspections Report based on Inspections Performed from 7/1/2011 to 6/30/2012" (4 pages, dated 7/19/2012).
14. DEC's October 26, 2011 Letter with CY 2012 CMS ("DEC 2012 CMS").
15. DEC SFY 2012 End-Year Report (July 2012), "Inspections Report based on Inspections Performed from 7/1/2011 to 6/30/2012" (4 pages, dated 7/19/2012) and DEC SFY 2013 Mid-Year Report (February 2013), "Inspections Report based on Inspections Performed from 7/1/2012 to 12/31/2012" (2 pages, dated 1/29/2013).
16. DEC's October 26, 2011 Letter with its CY 2012 CMS inspection plan ("DEC 2012 CMS") indicated that DEC had inspected 67 MSGP-authorized facilities to date and proposed a CY 2012 goal of 58 inspections. DEC inspection summaries indicate that only 26 MSGP inspections were accomplished in CY 2012. Accordingly, the three year total (CYs 2010-2012) was 93 inspections (i.e. 67 + 26 = 93). Based on MSGP universes of 206, 206 and 240 facilities in CYs 2010-2012 respectively, DEC needed to conduct approximately 66 inspections to meet the EPA CMS goal of 10% of the universe each year. For the first three years of having stormwater sector jurisdiction, DEC exceeded the EPA CMS goal for MSGP inspections by 27 total inspections or an average of 9 inspections per year. (i.e. $93 - 66 = 27$).

While DEC has exceeded the annual EPA CMS goal for MSGP inspections in CYs 2010-2012, DEC's MSGP inspection projections for CYs 2012-2013 indicate that DEC is projected to inspect at an annual rate less than the EPA CMS goal for

those two years. DEC's February 15, 2013 Letter (i.e. CY 2013 inspection schedule) projects 22 inspections based on a universe of 264 facilities. DEC's December 24, 2013 Letter (i.e. CY 2014 CMS) projects 14 inspections based on a universe of 290 facilities. If DEC meets these CYs 2013-2014 projections, DEC will have completed a total of approximately 7 more inspections than the EPA CMS cumulative inspection goal for the five year period, CYs 2010-2014, or about 2 inspections per year over the EPA CMS goal.

In regard to Metrics 4a8-4a9, DEC's combined two-year stormwater sector (i.e. MSGP and CGP) inspection measure for CYs 2011-2012 is approximately 66.5% (i.e. 147/221).

17. Based on the following referenced assessment, DEC's combined two-year construction stormwater inspection measure for CYs 2011-2012 is 62% (i.e. 66/107). For context, DEC's Program Description, Section 9.1.3, states that DEC's annual facility inspection schedule will include the number of construction stormwater inspections that will be completed under the construction stormwater general permit (CGP). However, the DEC 2011 and 2012 CMS submissions did not identify a specific number of CGP inspections. Instead, DEC indicated that CGP inspections would be done "as time allows" but both CMSs stated that DEC plans to conduct CGP inspections with the goal of meeting the EPA CMS goals of both Phase I 10% and Phase II 5% inspection coverages. The DEC CMSs state that if the CGP inspection goals appear to adversely affect DEC's ability to inspect facilities on its CYs' inspection lists, then DEC would focus on meeting the specific inspections already identified in the CYs' inspection list.

In addition, DEC data submitted to date does not provide detailed information on what is the exact universe of *active* total CGP coverages in a given calendar year. For example, DEC CMS submissions for CYs 2013 and 2014 use CGP universes based only on the number of new CGP coverages issued in a particular time period (e.g. number of NOIs submitted and subsequent coverages issued in a year). DEC then applies the Phase I/II 10%/5% criteria to this *new* coverage universe to project its CGP inspection commitments. Accordingly, DEC's projected inspections are likely underestimating what inspection rates are needed to meet EPA CMS goals because DEC is not using the *active* CGP universe as a basis to projected inspections needed to meet EPA CMS goals.

Based on this background, EPA staff made estimated projections of what level of inspections was needed in CYs 2011-2012 using some assumptions about a Phase I/Phase II split of the entire universe of CGP coverages and inspections. For

purposes of the assessment, it was assumed that the Phase I/Phase II split is 44%/56% respectively for the two calendar years 2011 and 2012. This percentage split is derived from CGP NOI information in DEC 2012 and 2013 submissions which include total NOI issuance counts with Phase I and Phase II splits.

DEC's Capacity Building Summary (March 2013) reported that 795 and 679 CGP authorizations were issued in CY 2011 and CY 2012 respectively but DEC has not been able to generate an actual universal number of active CGP coverages for any calendar year. For the purposes of the assessment, it is assumed the universe is equal to the number of NOIs submitted and coverages granted in the particular calendar year under discussion (i.e. not the *active* CGP universe). Accordingly, the projections of CY 2011 = 58 inspections and CY 2012 = 49 inspections potentially underestimates the number of CGP inspections that DEC needed to complete to meet EPA CMS goals.

18. DEC SFY 2011 End-Year Inspections Report (Final 7/28/2011), "Inspections Report based on Inspections Performed from 7/1/2010 to 6/30/2011" (4 pages, dated 7/28/2011) and DEC SFY 2012 End-Year Report (July 2012), "Inspections Report based on Inspections Performed from 7/1/2011 to 6/30/2012" (4 pages, dated 7/19/2012).
19. DEC SFY 2012 End-Year Report (July 2012), "Inspections Report based on Inspections Performed from 7/1/2011 to 6/30/2012" (4 pages, dated 7/19/2012) and DEC SFY 2013 Mid-Year Report (February 2013), "Inspections Report based on Inspections Performed from 7/1/2012 to 12/31/2012" (2 pages, dated 1/29/2013).
20. DEC is meeting approximately 62% of its projected CGP inspection goals as an overall number for the two year period, CYs 2011-2012 based on universes that do not accurately factor in all *active* CGP coverages. DEC needs to establish calendar year universes that take into account both NOI submissions/coverage issuances in that year but also coverages for construction projects from past years that are still in existence and active (i.e. construction facilities with multi-year active construction). Finally, DEC completed inspection evaluations should begin deriving separate counts for Phase I and Phase II sites so that a more specific comparison can be made for annual inspection commitment and CMS goal determinations and comparisons. In regard to Metrics 4a8-4a9, DEC's two-year combined stormwater sector (i.e. CGP and MSGP) inspection measure for CYs 2011-2012 is approximately 66.5% (i.e. 147/221). Similarly, the two-year combined stormwater sector inspection measure for SFYs 2012-2013 is approximately 68.9%.

21. DEC's October 26, 2011 Letter with CY 2012 CMS ("DEC 2012 CMS"). The DEC 2012 CMS states that Alaska has no large or medium CAFOs. DEC reported then that the Alaska DNR Division of Agriculture indicates there are just three dairy farms with approximately 250 cows being milked at any one time and one hog farm with 200 animals. Based on an August 2013 inquiry to DNR, DEC reports again that there are no CAFOs in Alaska. In the past, there had been farms with more than 200 beef cattle but none currently exist and that no existing dairy or cattle operations are likely exceeding 100 animals.

(*) This draft appendix is subject to further updating, revisions and clarifications based on additional information, reviews and feedback, including DEC feedback.